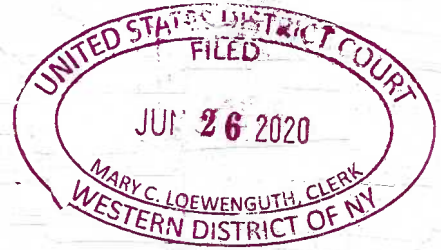


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



BRIDGET A. TOJEK,

1:19-CV-01470-LJV-MJR

Plaintiff,

REPORT AND
RECOMMENDATION AND ORDER

v.

DIANE HARRIS,

Defendant.

This case was removed from New York State Supreme Court, Allegany County, on October 31, 2019. (Dkt. No. 1). In her *pro se* complaint, the Plaintiff, Bridget A. Tojek, asserts, *inter alia*, claims of libel, defamation and malicious abuse of process against the Defendant, Diane Harris. (*Id.* at Exh. 5). By letter filed November 4, 2019, the Defendant, through counsel, requested an extension until November 27, 2019, to respond to the complaint by answer or motion. (Dkt. No. 5). By Text Order filed November 6, 2019, Hon. Lawrence J. Vilardo, the presiding judge, granted Defendant's request. (Dkt. No. 6). By letter filed November 19, 2019, the Defendant, through counsel, requested a second extension until December 13, 2019, to file an answer or motion. (Dkt. No. 9). By Text Order filed November 22, 2019, Judge Vilardo granted Defendant's request. (Dkt. No. 10). Defendant filed a verified answer on December 12, 2019. (Dkt. No. 12). On December 14, 2019, Judge Vilardo referred the case to the undersigned, pursuant to Section 636(b)(1) of Title 28 of the United States Code, for hearing and reporting on dispositive motions for consideration by the District Court. (Dkt. No. 13).

On December 16, 2019, the Plaintiff filed a request to the Clerk of Court for entry of default against the Defendant. (Dkt. No. 15). The Clerk denied the request because the answer was timely filed. See Docket Sheet entry. On December 18, 2019, Plaintiff moved for default judgement against the Defendant for failure to answer. (Dkt. No. 16).

This Court recommends that the Plaintiff's motion for default judgement (Dkt. No. 16) be denied as the Defendant's answer was timely filed. The answer was filed on December 12, 2019, one day prior to the deadline imposed by Judge Vilardo in his Text Order of November 22, 2019.

Pursuant to 28 U.S.C. §636(b)(1), it is hereby **ORDERED** that this Report, Recommendation and Order be filed with the Clerk of Court.

Unless otherwise ordered by Judge Vilardo, any objections to this Report and Recommendation must be filed with the Clerk of Court within fourteen days of service of this Report and Recommendation in accordance with the above statute, Rules 72(b), 6(a), and 6(d) of the Federal Rules of Civil Procedure, and W.D.N.Y. L. R. Civ. P. 72. Any requests for an extension of this deadline must be made to Judge Vilardo.

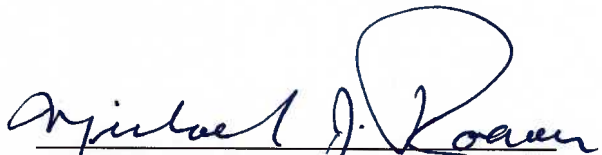
Failure to file objections, or to request an extension of time to file objections, within fourteen days of service of this Report and Recommendation WAIVES THE RIGHT TO APPEAL THE DISTRICT COURT'S ORDER. See *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15 (2d Cir. 1989).

The District Court will ordinarily refuse to consider *de novo* arguments, case law and/or evidentiary material which could have been, but were not, presented to the Magistrate Judge in the first instance. See *Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d 985, 990-91 (1st Cir. 1988).

*Finally, the parties are reminded that, pursuant to W.D.N.Y. L.R.Civ.P. 72(b), written objections "shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for each objection, and shall be supported by legal authority." **Failure to comply with these provisions may result in the District Court's refusal to consider the objection.***

SO ORDERED.

DATED: June 24, 2020
Buffalo, New York


HONORABLE MICHAEL J. ROEMER
United States Magistrate Judge